Nova Scotia
Advisory Council
on the Status of
Women

Conseil consultatif
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An agency of the
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Child Support and the Financial Implications of Child Support Guidelines: Submission to the Federal/Provincial/Territorial Family Law Committee

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PREFACE

The Nova Scotia Advisory Council on the Status of Women was established in 1977 in response to recommendations of a task force appointed during International Women's Year in 1975. The Council is mandated to monitor women's issues and to act as an advisory body to the provincial government.

Specifically, it is legislated to advise the Minister upon such matters relating to the status of women as are referred to the Council for consideration by the Minister Responsible for the Administration of the Status of Women Act, and to bring to the attention of the Minister matters of interest and concern to women.

In carrying out its duties, the Council may:

- receive and hear petitions and suggestions concerning the status of women;
- undertake and recommend research on matters relevant to the status of women;
- recommend and participate in programs concerning the status of women;
- propose legislation, policies and practices to promote equality of opportunity and status;
- publish reports, studies and recommendations.

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Introduction

The Nova Scotia Advisory Council on the Status of Women welcomes the opportunity to respond to the Federal/Provincial/Territorial Family Law Committee's public discussion paper, *Child Support*, and its companion research report, *The Financial Implications of Child Support Guidelines*.

In general, the Advisory Council supports the goals of child support orders laid out in the discussion paper. Children do have an inherent right to their parents' support, and the adequacy of the order to meet children's needs must be the foremost criterion in determining the award. Equity and consistency must also be gained. Attainment of these goals will begin to restore faith in the system and, concomitantly, compliance with its orders.

Parent's Minimum Needs

The Advisory Council believes that the notion of a "parental self-support reserve" could make a meaningful difference to women and children in Canada. If the justice system consistently recognized a minimal amount, such as the basic personal deduction as identified by Revenue Canada, as a self-support reserve applicable to the budgets of both parents, then the remaining (or net) income to be apportioned for the purposes of child support would more fairly reflect the greater earning capacity of Canadian men and the lower earning capacity of Canadian women. However, the Advisory Council adopts this position with some reservations, because it is clear that in everyday life, custodial parents will not protect themselves at the expense of their children by setting aside a self-support reserve, whereas the non-custodial parent's budget would be organized around the fact of the reserved amount. The "parental self-support reserve" could, in fact, unfairly discriminate against the custodial parent. If a woman has a choice between buying herself a much-needed pair of shoes or buying food for her children, the idea in principle that she has a right to those shoes is of no practical value. Meanwhile, the non-custodial parent gets the shoes first, and if there is enough left over, may be able to make a contribution to the feeding of the children!

Minimum Child Support Orders

The concept of mandatory minimum support orders is one which is, practically speaking, useless. Such orders are considered "symbolic" and meant to encourage the non-custodial parent's sense of responsibility; but $2 or $5 or $10 a month does not help support children, is not worth going after in cases of default (for the courts or the custodial parent), and, most importantly, is not likely to encourage paternal feelings in men who are lacking in such sentiments at the onset of family separation. If non-custodial parents truly have no money to spare, then implementing a policy of minimum child support orders would cost more than any conceivable benefits. *Child Support* suggests that minimum child support orders would assist in tracking fathers who someday may be able to pay more than a minimal amount. Surely a parent's social insurance number is a more effective tracking mechanism and is all that would be needed to locate any resident of the country.

Determining Children's Needs While Considering Parental Income and Means

Current combined means of custodial and non-custodial parents should be used to determine the appropriate level of children's needs. If the parents were still living together, an equitable portion of their discretionary income would likely be spent on the child(ren). If we do away with the notion of "basic needs," and have each parent contribute according to his or her financial ability, then children are more likely to benefit from their parents' current total means.

The Advisory Council strongly agrees that incurring debt in order to avoid paying child support should result in no reduction in payments. The only way to enforce this is to refuse to consider any debt assumed after the onset of the separation of the family which significantly alters the non-custodial parent's ability to pay child support.

Multiple Family Situations

The Advisory Council reccgnizes the complexity of child support decisions in multiple family, or blended family, situations. Children's inherent right to adequate support must continue to be the goals of child support awards in these cases. Ideally, parents would take their obligations toward children they have already assisted in

conceiving very seriously indeed, and would consider carefully whether they could actually afford to have another family with a new partner before setting out to do so.

A particularly potent norm is at work here, however, and this involves the expectation that most heterosexual adult relationships will be "cemented" by offspring. The force of this social expectation and the desire of a new couple to "try again" often result in an override of financial considerations.

Perhaps a helpful analogy is to be found in the situation of a couple who may decide to have five children in one relationship. Do the last two deserve something that the first three don't? Of course not. All children have a right to support equally from their biological parents. What this may mean in multiple family situations, however, is that children of the first family may be penalized because their non-custodial parent decides to have more children. In both cases, the resources available to care for the children remain constant, but the number of children grows. While having more children to support may result in a non-custodial parent's attempt to reduce support obligations to older children, the principle of adequate awards for all children and equal rights of children of the same biological parents, must remain the determining factors in arriving at dollar figures.

Dependent partners should not be an allowable deduction when determining child support for children of past relationships. Likewise, a new spouse's income should not be considered. Step-children who are legally adopted would set in motion the same "equitable distribution" of support as subsequent biological children.

Joint Custody Situations and Extended Visitation

The Advisory Council has grave reservations about the implications of joint custody for women. For most women, it means that they continue to do most of the work of childrearing and pay most of the costs (financial and otherwise), yet still remain under the scrutiny and control of the children's father (who pays a lot less child support than if the mother had sole custody) and the state. The Advisory Council believes that joint custody should not be awarded in cases where there will not be a 50-50 split in the time (including overnights) spent with the children; sole custody should be awarded to the parent who will care for the children the majority of the time. Where the split <u>is</u> 50-50, an equalization-of-income approach to child support payments may be appropriate.

In cases of extended visitation, the suggestion of a reduction in support payments only on the amount calculated for food and clothing seems reasonable.

Variation of Support Orders

Support orders should be made allowing for inflation to defray cost-of-living increases. This should be automatic on a yearly basis; all it requires is a letter to each custodial and non-custodial parent yearly with the computer-assisted calculation of support payment amounts for the coming year, like property tax increases. In addition, some formula can be used to automatically increase the payments when the child moves from one age category to another. Age categories could be devised using some kind of logic to determine what increases (or decreases) are appropriate. For example:

0 - 2 years (diapers, infant child care, maybe formula)

2 - 5 years (toddler child care)

5 - 10 years (more food, more clothes, after-school care)

10 - 18 years (more food, more clothes, less childcare)

In addition to this, support orders should be re-evaluated when one of the parents presents documented evidence indicating that there has been a lessening in ability to pay (in the case of non-custodial parents) or an increase in need (in the case of the custodial parent). The only situation not then covered is one where the non-custodial parent's ability to pay child support increases, and her or she neglects to mention it.

Advisory, Presumptive, or Mandatory Guidelines

The Advisory Council believes that presumptive guidelines would best serve the interests of women and children. The guidelines should include a clear indication of situations which would warrant some deviation. If guidelines are to achieve the goals of adequacy, consistency and equity, it must not be left up to judges to decide that every case is exceptional. Consistency will only be seen to be achieved when the chosen guideline is used consistently and deviated from sparingly.

Compensation for Non-Financial Contribution

The Advisory Council believes that compensation for the non-financial contribution of custodial parents is in keeping with the principle of equity in determining the amount

of a child support award. It is, however, easy to see how such a factor would only serve to increase custody disputes initiated by non-custodial parents who are less committed to parenting than they are to "saving" money.

Other Issues

Other points that the Advisory Council believes are important but are not emphasized in this discussion paper include the following:

- At present, the onus is on the custodial parent to ensure adequate child support for the children and to pursue defaulters. This should not be the case, and new legislation should implement a process whereby the state takes on this responsibility through appropriate agencies. Women should not be responsible for legal fees associated with this stage of the process.
- The division of jurisdiction between federal (divorce) and provincial (separation, common-law, no relationship) child support legislation is bizarre and can result in two different systems being applied to the same family in cases where the couple first separates, then divorces, and also could produce an extremely inequitable situation with regard to amounts paid for children from divorced, separated, or common-law relationships. What will the new legislation do to ensure that provincial legislation is brought in line with the federal Act?
- The practice of pressuring women to accept low child support and/or an unfair division of matrimonial property in return for uncontested custody needs to addressed in a way which provides women with fair child support and their rightful half of assets without jeopardising custody wishes. The consistent application of child support guidelines should go a long way to removing the opportunity for such practices to exist. Custody should be awarded in accordance with the best interests of the child(ren). One indicator of the child's best interests is the parent who took care of the children prior to the separation/divorce, unless there is some compelling reason why that parent should not have custody. Merely deciding one wants to have the children after the fact of the separation or divorce seems an extremely weak claim to custody. The Advisory Council also believes that once custody is awarded, the children and their custodial parent should not be subjected to a continuous stream of custody challenges unless there is some strongly compelling reason to do so, such as evidence of abuse or neglect. The present

system, under which "custody decisions are never final," is a terrible one for women and their children.

- Suggesting that the problem of default on support payments is even partially solved by the notion that "arrears should accrue" is ridiculous. A system needs to be put in place whereby the state provides a woman with the necessary amount of support in the same month that the default occurs. Then the state should be responsible for the subsequent collection of money from the defaulter. Providing a woman with a year's worth of arrears cheques at one time does not enable her to support her children adequately. Today's need for milk and shoes cannot be provided for retroactively.

Financial Implications

The Financial Implications of Child Support Guidelines does an admirable job of presenting several options for determining the cost of raising children and for child support guidelines. Despite the complexity of the issue, this report is clear and easy for the non-economist to follow.

Having said this, however, it is surprising to the Advisory Council that the attempt to determine children's needs—to put a dollar figure on them—was abandoned so quickly by the economists consulted by the Federal/Provincial/Territorial Family Law Committee. The Advisory Council recognizes that there are several drawbacks to relying solely on a determination of children's basic needs in formulating a child support award. (For instance, children of economically advantaged parents may suffer a considerable loss in standard of living if a single determination of need is applied across the board. However, it is equally dangerous to assume that the expenditures of an intact family with low income are an adequate guide to children's needs.) Children's needs are regularly assessed by governments that provide welfare payments or board and clothing allowances to foster families. When the state invites adults to take on the responsibility for particular children who have been removed from their biological parents for whatever reasons, a budget to assist those adults in meeting the foster children's needs is quickly developed using standard guidelines. For example, in Nova Scotia foster parents are paid a board rate of $12.48 per day for a child under age 10, and $18.14 per day for a child age 10 and over. Similarly, a clothing allowance and a spending allowance have been set, with higher amounts for older children.

It is difficult for a non-economist to compare these actual dollar figures with the ratios cited in the Committee's report. Nonetheless, it does seem plausible that some merging of need and expenditure could result in a model that would be a more valid indicator than either need or expenditure alone.

Despite the aforementioned reservations about the use of economic models to determine expenditures related to children, there is one model among those presented that the Advisory Council believes to be superior to the others. The Adult Goods model seems to be the most equitable of the four presented. The criteria by which it has been assessed in the report–consistency, robustness, absence of extreme values, and simplicity–are appropriate ones. From the Advisory Council's reading of the report, the Adult Goods model delivers the most adequate, consistent results in a relatively simple manner.

The use of guidelines to calculate child support awards would be a step forward for Canadian women and children. As mentioned above, the Advisory Council supports the idea of presumptive guidelines, in an effort to achieve the goals mentioned at the outset, namely, adequacy, equity and consistency. After wide consultation and conscientious consensus development, it should be possible to choose one guideline system that will apply throughout the country to all but a very few of the cases that come before the courts.

The Income Shares with Reserve guideline seems to yield the awards most in keeping with the goals of child support awards. The principle of child support awards being divided between the parents in proportion to their income is fair, straightforward and easy to apply. As suggested above, the modification to the Income Shares guideline of a self-support reserve has the effect of more fairly apportioning the responsibility between husbands and wives, in accordance with the usual income gap in Canada between men and women. The self-support reserve need not add undue complexity to the determination of the award, once a standard minimum amount is agreed upon for such a reserve.

Income Tax Implications of Child Support

The Advisory Council believes it is essential that child support recipients not be burdened with the income taxes payable on those amounts. Undoubtedly, someone has

to pay tax on the earned income, but it is unreasonable to expect recipients to come up with tax owing once each year, or to save some money out of each month's support in order to pay the tax. The tax implications of each support award must be added to the award.

Adding the tax implications to the cost of the award, as the Family Law Committee's report does, looks straightforward enough. How, though, would it work in practice? The Ontario experience in maintenance enforcement shows that the payments themselves can be funnelled from the employer through the court/government. If this is so, it should not be unduly complex to create an extra column in the same computer/money transfer to remit the tax owing (at the recipient's tax rate) directly to Revenue Canada, or to hold it at the court, and remit it to Revenue Canada annually. This would seem to be a parallel operation to the deductions at source that are effected by employers every day.

And how would family lawyers and judges in hundreds of jurisdictions across the country apply the same guideline? Surely it would be relatively straightforward to develop a formula, or possibly a computer program, into which the facts and numbers of each individual case can be entered. The Advisory Council believes it is critical for the success of such an effort that individuals without advanced degrees in economics or finance be able to use the formula or package.

Financial Implications also discusses the benefit accruing to the support payer by reason of not having to declare that money as income. It is clear to the Advisory Council that any such benefit should go to the child(ren). Is there some way it could accrue in trust to the child(ren)? Where it is clear that there are substantial tax benefits to the payer of child support, it seems only reasonable that the child(ren) should be the beneficiaries. It is difficult to envisage how the Income Shares with Reserve guideline could be modified to nullify this benefit to the child support payer (for example, by increasing the award). However, the principle of equity demands that a child not be deprived of a benefit that otherwise would accrue to the non-custodial parent. Evidence of men's relative affluence after divorce, and women's and children's relative impoverishment by the same action, is too strong and consistent to ignore. This would seem to be one small way to achieve the goals of child support awards more fully.